

A-1

---

**Eastern Contractors, Inc.**

571 Union Ave  
Framingham, MA 01702

Phone: 508-820-4401  
Fax: 508-879-9633

---

**VIA FAX & MAIL**

October 18, 2002

The Design Partnership of Cambridge  
500 Rutherford Ave

Fax: 617-241-5143

Phone: 617-241-9800

Charlestown, MA 02129

Attn: David Capaldo

Project: New Wetherbee Elem. & Middle Schi.  
Sub: DPC letters dated 10/16/2002

Project #: 9902  
Job #: 900

Dear Mr. Capaldo

Reference your above letters, we respond as follows:

**Bond issues:** Please refer to the letter from our counsel Quinlan & Sadowski dated 10/11/02. This issue was also discussed at the March meeting with Mr. Capolupo and the parties had left with the understanding that the two counsels shall resolve the issue. To date, we have sent various correspondences to you but have failed to hear from the City's counsel. As a-matter-of-fact, several calls to Ms. Doreen M. Zankowski from Mr. Quinlan have gone unanswered (we again refer to letters sent previously to you directly from Mr. Quinlan & ECI.)

**Delays:** Various on-site issues due to unforeseen conditions, some of them summarized below, have caused the slippage of the project to date:

1. Ledge
  - o Excessive quantities
  - o Failure of City to issue CCD's/Change orders and pay in a timely fashion for ledge removed
  - o Failure to receive direction for the additional ledge encountered and mode of payment, etc.
2. Masonry
  - o Re-construction of Arches
  - o Poor existing masonry conditions
3. Re-sequencing due to above stated conditions of the project activities such as:
  - o Steel erection

- o Exterior masonry work including its start and finish
- o Excavation & Backfill operations
- o Concrete walls and floors

In our update # 6 (data date 01Sep02), which included the completion of the project finishes (Activity ID # 21345, # 22345, # 30650, # 31645, # 32645, #40610, # 41660 & # 42645) indicate that the scheduled completion is 48 days behind the current completion date March 03, 2003 as agreed upon in March 2002 meeting with the City.

In our update # 7 (data date 01Oct02), which included the completion of the project finishes (Activity ID # 21345, # 22345, # 30650, # 31645, # 32645, #40610, # 41660 & # 42645) indicate that the scheduled completion is 30 days behind the current completion date March 03, 2003 as agreed upon in March 2002 meeting with the City.

Update # 6 indicates that the ledge within Building A with the exception of Exterior wall (activity #IM1000) caused a delay of 22 days resulting in a total of 48 days (ID# 42645). However, Update # 7 indicates that the overall delay has now been mitigated to only 30 days and includes all ledge removal within Building A. Thus, overall delay has been reduced from 48+ days (48 days from Update 6 + balance of ledge from Building A) to 30 days. Overall completion of the work is indicated by the substantial completion activity ID # 925 which includes Landscape related activities.

Both updates include all the time delays due to ledge encountered in Building A through data date 01OCT02 and not any of the other above mentioned extra/out-of-sequence work activities. Also, not included are any time-impacts due to any of recently issued CCD's and Change Orders. Thus, the current update reflects not only the recovery of the delays due to ledge but also several other issues which were on the critical path. If you wish us to recover any more time, the City will need to issue us a change order for acceleration.

The overall impact to the project has been substantially mitigated by us at no extra cost to the owner with the exception of yet to be renegotiated ledge unit prices and delays costs for the 30 days beyond 03 March 2003 completion.

Despite our best efforts to mitigate delays caused by unforeseen conditions, delays in approvals by the City, and failure of the City to make any payments in a timely fashion per Contract and Statutory laws, you are now threatening us with undue burden. The City owes us over \$2.4 million in payments plus interest costs for late payments to date. If we fail to receive our payments as indicated in our 10/17/2002 letter, we will be forced to shut down the Project causing un-repairable harm to the Project and the City.

Your letter indicates the assessment of damages. Please refer to article 9.5.1.6 of the General conditions second sentence which states "... and that the retainage currently held by the Owner would not be adequate to cover actual or liquidated damages for the anticipated delay." The current retainage being held by the City as of 30Sep02 Requisition # 13 will be \$770,322 which shall more than adequately cover any damages the City might incur even if they disagree with our position. (Update # 7 is Data date 01Oct02). This is consistent with remarks made by the

Owner's team but not recorded at the weekly project meetings.

In our opinion, at this point in the project, there is reasonable evidence and facts to prove that:

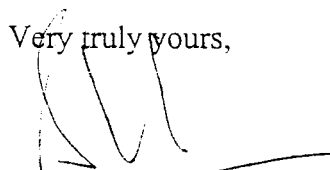
1. The delays caused to the project were beyond our control.
2. City's intention to penalize us for their failure to meet their obligations required under the contract to process paperwork in a timely fashion.
3. City's failure to pay in a timely fashion causing financial hardships to us and our subcontractors.

We shall be submitting our delay claims for renegotiating of unit prices for excessive ledge quantities encountered and other delays under separate cover for your review and discussion.

In closing, any actions by the City to further delay payments shall leave us with no other alternative but to close the project, start legal proceedings for breach of contract, failure to follow and act in good faith (MGL 93A), etc.

If you have any questions, please contact the undersigned.

Very truly yours,



Suresh Bhatia, P.E.  
Vice President/PM

CC: Bayside  
Encl. As above

OCT-18-2002 FRI 12:18 PM

FOR: EASTERN CONTRACTORS INC 5088799633

| DATE   | START    | RECEIVER             | TX TIME | PAGES | TYPE | NOTE | M#  | DP |
|--------|----------|----------------------|---------|-------|------|------|-----|----|
| OCT-18 | 12:18 PM | DESIGN PARTNER CAMBR | 37"     | 3     | SEND | OK   | 038 |    |

TOTAL : 37S PAGES: 3

## Eastern Contractors, Inc.

571 Union Ave  
Framingham, MA 01702

Phone: 508-820-4401  
Fax: 508-879-9633

### VIA FAX & MAIL

October 18, 2002

The Design Partnership of Cambridge  
500 Rutherford Ave

Fax: 617-241-5143

Phone: 617-241-9800

Charlestown, MA 02129

Attn: David Capaldo

Project: New Wetherbee Elem. & Middle Schl.  
Sub: DPC letters dated 10/16/2002

Project #: 9902  
Job #: 900

Dear Mr. Capaldo

Reference your above letters, we respond as follows:

OCT-18-2002 FRI 12:20 PM

FOR: EASTERN CONTRACTORS INC 5088799633

| DATE    | START    | RECEIVER    | TX TIME | PAGES | TYPE | NOTE  | M#     | DP |
|---------|----------|-------------|---------|-------|------|-------|--------|----|
| OCT-18  | 12:19 PM | 19786866296 | 1' 07"  | 3     | SEND | OK    | 039    |    |
| TOTAL : |          |             |         |       |      | 1M 7S | PAGES: | 3  |

\*\*\*\*\*

---

**Eastern Contractors, Inc.**571 Union Ave  
Framingham, MA 01702Phone: 508-820-4401  
Fax: 508-879-9633

---

**VIA FAX & MAIL**

October 18, 2002

The Design Partnership of Cambridge  
500 Rutherford Ave

Fax: 617-241-5143

Phone: 617-241-9800

Charlestown, MA 02129

Attn: David Capaldo

Project: New Wetherbee Elem. &amp; Middle Schl.

Project #: 9902

Sub: DPC letters dated 10/16/2002

Job #: 900

Dear Mr. Capaldo

Reference your above letters, we respond as follows: